IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 498 OF 2006
IN
SUIT NO.3474 OF 2005.

Pushpaben Vishwambarlal Khetan
and others. ... Plaintiffs.
Versus.
Heena Narendra Patel and others. ... Defendants.

Shri V.P.Amin i/by M/s.B.amin & Co. for the Plaintiffs.

Shri C.J.Sawant, Senior Counsel with Shri Ashok Maru for the Defendant No.1.

Shri L.H.Patil for Defendant No.2.

CORAM : ABHAY S.OKA, J.

DATED : 27th July, 2007.

P.C.:

1. Heard the learned Senior Counsel appearing for the 1st Defendant in support of the Chamber Summons. I have also heard the learned Counsel appearing for the Plaintiff who has opposed the Chamber Summons.

2. At this stage the learned Senior Counsel appearing for the 1st Defendant is pressing prayer clause (a) of the Chamber Summons which reads thus:

"(a) That this Hon'ble Court may be pleased to revise or direct the Prothonotary & Senior Master, High Court, Bombay to revise the valuation of the each claim in the suit and to determine the correct valuation of each claim in the suit for

purpose of court fees after holding necessary inquiry."

3. The learned Senior Counsel appearing for the 1st Defendant has invited my attention to the averments made in the suit and in particular paragraph 15 thereof. He submitted that every Plaintiff has a separate cause of action as the specific case made out is that the Defendants should be ordered to pay damages of Rs.1 crore each to every Plaintiff. His contention is that the every Plaintiff will have to pay maximum Court fee payable and therefore, the valuation made by the plaintiffs to the suit needs to be revised.

4. The learned Counsel appearing for the Plaintiff submitted the in view of Article 1 of Schedule I of the Bombay Court Fees Act, 1959, the Plaintiffs have paid the maximum fee leviable on the plaint. He submitted that the total claim of the Plaintiffs is Rs.8 crores and accordingly the maximum Court fee payable has been paid by the Plaintiffs. He, therefore, submitted that the Chamber Summons deserves to be dismissed.

5. I have considered the submissions. I have also referred to the various averments made in the plaint and in particular the averments made in paragraph 15 of the plaint. My attention has been invited to the provisions of section 8 of the said Act of 1959. In view of the

contentions raised by the 1st Defendant, an enquiry will have to be held in terms of section 8 to ascertain whether the valuation made is proper and whether the Court fee paid by the Plaintiffs is proper. Therefore, the Prothonotary & Senior Master will have to hold an enquiry as regards the contention raised by the 1st Defendant of insufficiency of Court fees paid by the Plaintiffs on the suit claim. After holding an enquiry, the learned Prothonotary & Senior Master will submit a report to this Court.

6. Therefore, the Prothonotary and Senior Master is directed to hold an enquiry. It is obvious that the Prothonotary & Senior Master will give an opportunity of being heard to the parties and to produce relevant material, if any. The enquiry will be concluded and the report will be submitted within a period of 12 weeks from today. The suit will be listed on board for directions after the submission of the report. The learned Prothonotary and Senior Master will supply copies of the report to the Advocates on record for the parties to the suit. Consequential orders will be passed by this Court after considering the report. It will be open for the 1st Defendant to take out appropriate proceedings for claiming reliefs in terms of prayer clauses (b) and (c) after the report is submitted as aforesaid. The Chamber Summons is disposed of in the

above terms. No order as to costs.

Judge.